

February 27, 2003

**NOTICE AO DRAFT COMMENT PROCEDURES**

The Commission has approved a revision in its advisory opinion procedures that permits the submission of written public comments on draft advisory opinions when proposed by the Office of General Counsel and scheduled for a future Commission agenda.

Today, DRAFT ADVISORY OPINION 2003-01 is available for public comments under this procedure. It was requested by Mitchell J. Eichen, treasurer on behalf of NORPAC. The draft may be obtained from the Public Disclosure Division of the Commission.

Proposed Advisory Opinion 2003-01 will be on the Commission's agenda for its public meeting of Thursday March 6, 2003.

Please note the following requirements for submitting comments:

1) Comments must be submitted in writing to the Commission Secretary with a duplicate copy to the Office of General Counsel. Comments in legible and complete form may be submitted by fax machine to the Secretary at (202) 208-3333 and to OGC at (202) 219-3923.

2) The deadline for the submission of comments is 12:00 noon (EST) on March 5, 2003.

3) No comments will be accepted or considered if received after the deadline. Late comments will be rejected and returned to the commenter. Requests to extend the comment period are discouraged and unwelcome. An extension request will be considered only if received before the comment deadline and then only on a case by case basis in special circumstances.

4) All comments timely received will be distributed to the Commission and the Office of General Counsel. They will also be made available to the public at the Commission's Public Disclosure Division.

## **CONTACTS**

Press inquiries: Ron Harris (202) 694-1220

Acting Commission Secretary: Mary Dove (202) 694-1040

Other inquiries:

To obtain copy of draft AO 2003-01 contact Public Records Office-  
Public Disclosure Division (202) 694-1120, or 800-424-9530.

For questions about comment submission procedure contact  
Rosemary C. Smith, Acting Associate General Counsel, (202) 694-1650.

## **ADDRESSES**

Submit single copy of written comments to:

Commission Secretary  
Federal Election Commission  
999 E Street NW  
Washington, DC 20463



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

RECEIVED  
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COMMISSION  
SECRETARIAT

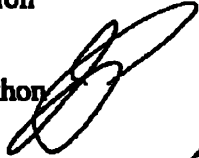
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February 27, 2003


**MEMORANDUM**


**AGENDA ITEM**  
**For Meeting of: 3-06-03**


TO: The Commission


THROUGH: James A. Perkhon   
Staff Director

FROM: Lawrence H. Norton   
General Counsel

James A. Kahl   
Deputy General Counsel

Rosemary C. Smith   
Acting Associate General Counsel

John C. Vergelli   
Acting Assistant General Counsel

Albert J. Kiss   
Attorney

SUBJECT: Draft AO 2003-1 - Alternative Drafts

The attached documents respond to questions raised by NORPAC, a nonconnected political committee. NORPAC sponsors an annual mission to Washington during which NORPAC participants meet with Members of Congress to discuss issues in support of Israel. NORPAC incurs the following expenses in connection with the annual mission to Washington: bus travel; food; rental of meeting space; supplies for participants (pens, folders, pads, etc.); informational packets regarding issues to be discussed; and Congressional directories. Annual mission participants make a donation to NORPAC in the form of an attendance fee to participate in the mission. NORPAC inquires whether the attendance fees related to the annual mission can be deposited into NORPAC's non-Federal account and the expense disbursements made from NORPAC's non-Federal account, or whether the annual mission expenses must be allocated between NORPAC's Federal and non-Federal accounts.

**Memorandum to the Commission**  
**Draft AO 2003-1 - Alternative Drafts**  
**Page 2**

**This Office believes that the questions presented by NORPAC are very close legal judgments under the Act and Commission regulations. Neither the Act nor the regulations provide obvious answers to the questions presented, and there is a dearth of secondary legal authority on these issues. Therefore, we are presenting two alternative drafts. The first alternative, Draft A, concludes that NORPAC must either allocate annual mission disbursements between NORPAC's Federal and non-Federal accounts, or make these disbursements solely from its Federal account. The second alternative, Draft B, concludes that NORPAC may make disbursements for the annual mission solely from its non-Federal account, without allocation. We request that these drafts be placed on the agenda for March 6, 2003.**

**Attachments**  
**Drafts A and B**

1 ADVISORY OPINION 2003-1

2  
3  
4 Mitchell J. Eichen  
5 Treasurer  
6 NORPAC  
7 P.O. Box 5595  
8 Englewood, N.J. 07631  
9

10  
11 Dear Mr. Eichen:

12 This responds to your letters on behalf of NORPAC dated November 18,  
13 2002, and December 28, 2002, requesting an advisory opinion concerning the  
14 application of the Federal Election Campaign Act of 1971, as amended ("the Act")  
15 and Commission regulations to NORPAC's annual mission to Washington.

16 ***Background***

17 The Statement of Organization, as amended, filed by NORPAC indicates that  
18 it is a nonconnected committee and qualifies as a multicandidate committee. Reports  
19 filed with the Commission indicate that NORPAC makes contributions in connection  
20 with Federal elections, and has also made donations to non-Federal candidates using  
21 Federal funds.

22 You state that each year "participants" from NORPAC make an annual  
23 mission to Washington, where they meet with Members of Congress to discuss issues  
24 in support of Israel. You state that participants act solely as individuals. You state  
25 that these issues can include bills that have been introduced or that NORPAC would  
26 like to have introduced. You further state that no discussions of support for any  
27 Member of Congress are held at these meetings. You state that:

- 1 1. During the mission, no campaign contributions are delivered to anyone at  
2 anytime;
  - 3 2. During the mission, no receptions or similar events are held for any  
4 Member of Congress or candidates for Federal office;
  - 5 3. NORPAC seeks no assistance from Members of Congress or candidates  
6 for Federal office for fundraising activities;
  - 7 4. Participants do not meet with political party officials as part of the  
8 mission;
  - 9 5. To the best of your knowledge, no Member of Congress or candidate for  
10 Federal office has ever signed a fundraising letter for NORPAC, or  
11 otherwise participated in fundraising for NORPAC;
  - 12 6. No contributions of any sort (e.g., to political party committees or to  
13 PACs) are made as part of the annual mission; and
  - 14 7. As a result of these meetings, subsequent decisions about candidate  
15 support may be made.
- 16 You provide the following examples of expenses incurred in connection with  
17 the annual mission to Washington: bus travel; food; rental of meeting space; supplies  
18 for participants (pens, folders, pads, etc.); informational packets regarding issues to  
19 be discussed; and Congressional directories. You state that payments are made to  
20 NORPAC by annual mission participants in the form of an attendance fee to  
21 participate in the mission, and that the attendance fee is based in large part on the

1 prior year's fee, and is intended to allow NORPAC to recover the direct costs of its  
2 mission.

3 You state that, until now, all the attendance fees related to the annual mission  
4 were deposited into NORPAC's Federal account, and all the disbursements made in  
5 connection with the annual mission were made from NORPAC's Federal account. In  
6 December 2001, NORPAC established a non-Federal bank account.

7 ***Question Presented***

8 You ask whether the attendance fees related to the annual mission may be  
9 deposited into NORPAC's non-Federal account and whether the disbursements for  
10 the annual mission may be made from NORPAC's non-Federal account, or whether  
11 the annual mission expenses must be allocated between NORPAC's Federal and non-  
12 Federal accounts.

13 ***Analysis and Conclusion***

14 In brief, the Commission concludes that NORPAC may either allocate  
15 disbursements for the expenses about which you inquire between NORPAC's  
16 Federal and non-Federal accounts, or it may make these disbursements solely from  
17 NORPAC's Federal account.

18 NORPAC has chosen to organize and operate as a Federal political  
19 committee.<sup>1</sup> Under 2 U.S.C. 434(a), such a political committee must file reports of  
20 receipts and disbursements. Under 2 U.S.C. 434(b)(4), these reports must include

1 "the total amount of all disbursements, and all disbursements" in several categories,  
2 such as expenditures, independent expenditures, contributions, loans, transfers and  
3 "any other disbursements." Given these statutory reporting requirements and given  
4 that NORPAC exists in legal form as a Federal political committee,<sup>2</sup> disbursements  
5 for the expenses about which you inquire must be viewed in light of NORPAC's  
6 status as a political committee. The major purpose of a political committee is  
7 material to the reporting of receipts and disbursements even if those receipts and  
8 disbursements are not directly in connection with a federal election.<sup>3</sup>

9 Since 1977, Commission regulations have required political committees  
10 active in both Federal and non-Federal elections to allocate their administrative  
11 expenses between the committee's Federal and non-Federal accounts "in proportion  
12 to the amount of funds expended on Federal and non-Federal elections, or on another  
13 reasonable basis." *See* Explanation and Justification to the Final Rules on Methods  
14 of Allocation Between Federal and Non-Federal Accounts; Payments; Reporting, 55  
15 FR 26058, 26059 (June 26, 1990). For purposes of this opinion, these rules were not

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<sup>1</sup> This choice inures to the benefit of NORPAC in some ways; e.g., NORPAC is not limited to soliciting from a restricted class as it would be if it were the separate segregated fund of a connected organization.

<sup>2</sup> For example, NORPAC is not a separate segregated fund of a connected organization that has purposes broader than that of a political committee.

<sup>3</sup> *See, e.g., FEC v. GOPAC, Inc.*, 871 F.Supp. 1466, 1470-71 (D.D.C. 1994) ("*Buckley* (424 U.S. 1 (1976)) authoritatively establishes that *any* payment of \$1,000 or more by an organization whose major purpose has been determined to be the nomination or election of an identified candidate for federal office . . . is, 'by definition, campaign related' and hence, constitutes an 'expenditure' by a 'political committee.'").



1 changed by the Bipartisan Campaign Reform Act of 2002, Pub. L. 107-155, 116 Stat.  
2 81 (March 27, 2002). The cited Explanation and Justification notes that the purpose  
3 of these rules is to implement the contribution and expenditure limitations and  
4 prohibitions established by 2 U.S.C. 441a and 441b. 55 FR at 26058.

5 Commission regulations at 11 CFR 106.6 set forth the procedures to be  
6 followed by nonconnected committees that make disbursements in connection with  
7 both Federal and non-Federal elections. Under 11 CFR 106.6(a), nonconnected  
8 committees may make such disbursements in one of two ways: they may make them  
9 entirely from funds raised subject to the prohibitions and limitations of the Act; or, if  
10 they have established separate Federal and non-Federal accounts pursuant to 11 CFR  
11 102.5, they may allocate them between these accounts. If a nonconnected committee  
12 elects to allocate, then it should allocate these disbursements pursuant to the funds  
13 expended method described at 11 CFR 106.6(c). Section 106.6(b) provides that  
14 "nonconnected committees that make disbursements in connection with federal and  
15 non-federal elections shall allocate expenses for the following categories of activity":

- 16 1. Administrative expenses including rent, utilities, office supplies, and salaries,  
17 except for such expenses directly attributable to a clearly identified candidate.  
18 11 CFR 106.6(b)(2)(i);
- 19 2. The direct costs of a fundraising program or event including disbursements  
20 for solicitation of funds and for planning and administration of actual  
21 fundraising events, where federal and non-federal funds are collected through  
22 such program or event. 11 CFR 106.6(b)(2)(ii); and

1       3. Generic voter drives including voter identification, voter registration, and get-  
2       out-the-vote drives, or any other activities that urge the general public to  
3       register, vote or support candidates of a particular party or associated with a  
4       particular issue, without mentioning a specific candidate. 11 CFR  
5       106.6(b)(2)(iii).

6       The expenses about which you inquire are of the type listed in 11 CFR  
7       106.6(b)(2)(i) (e.g., office supplies, rental of meeting space, etc.). Thus, the  
8       Commission finds that these are administrative expenses. Therefore, the  
9       Commission further finds that the expenses about which you inquire must be  
10      allocated between Federal and non-Federal funds under 11 CFR 106.6, unless they  
11      are paid solely from NORPAC's Federal account.<sup>4</sup>

12      You ask whether payments to NORPAC by participants in the annual mission  
13      to Washington are exempt from the general contribution limitations to a political  
14      committee. The attendance fees for the mission to Washington may be deposited in  
15      either NORPAC's Federal or non-Federal account. Contributions by participants to  
16      NORPAC's Federal account are contributions to NORPAC, and thus are subject to  
17      the Act's contribution limitations, prohibitions, and reporting requirements. 2 U.S.C.

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<sup>4</sup> You also ask whether certain disbursements in connection with NORPAC's annual mission to Washington constitute "non-Federal activities" and are therefore exempt from reporting under the Act. As discussed above, disbursements in connection with NORPAC's annual mission to Washington should be allocated between NORPAC's Federal and non-Federal accounts, unless these disbursements are solely made from the Federal account.

1 434 and 441a. However, donations by participants to NORPAC's non-Federal  
2 account are not subject to the Act's contribution limitations. *See* 11 CFR 106.6.

3 The Commission expresses no opinion concerning any possible application  
4 of Federal lobbying statutes (*e.g.*, the Lobbying Disclosure Act of 1995, codified at 2  
5 U.S.C. 1601 *et. seq.*) since those issues are not within its jurisdiction. For the same  
6 reason the Commission also expresses no opinion as to the implications of  
7 NORPAC's annual mission activities under the Internal Revenue Code, and in  
8 particular expresses no opinion as to NORPAC's status as a political organization  
9 under 26 U.S.C. 527.

10 This response constitutes an advisory opinion concerning the application of  
11 the Act and Commission regulations to the specific transaction or activity set forth in  
12 your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a  
13 change in any of the facts or assumptions presented, and such facts or assumptions  
14 are material to a conclusion presented in this opinion, then the requestor may not rely  
15 on that conclusion as support for its proposed activity.

16

17 Sincerely,

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Ellen L. Weintraub  
Chair

1 ADVISORY OPINION 2003-1

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4 Mitchell J. Eichen  
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13 ***Analysis and Conclusion***

14 Commission regulations at 11 CFR 106.6 set forth the procedures to be  
15 followed by nonconnected committees that make disbursements "in connection with  
16 both Federal and non-Federal elections." Under 11 CFR 106.6(a), nonconnected  
17 committees may make such disbursements in one of two ways: they may make them  
18 entirely from funds raised subject to the prohibitions and limitations of the Act; or, if  
19 they have established separate Federal and non-Federal accounts pursuant to 11 CFR  
20 102.5, they may allocate them between these accounts. 11 CFR 106.6(b)(2), in turn,  
21 provides that "nonconnected committees that make disbursements in connection with  
22 federal and non-federal elections" shall allocate certain expenses.

1           Expenses of the sort incurred as part of the annual mission to Washington  
2   (e.g., travel, food, rental of meeting space, and office supplies) are invariably  
3   administrative expenses subject to the allocation regime in 11 CFR 106.6, if made in  
4   connection with Federal and non-Federal elections. The Commission understands  
5   the purpose of the annual mission to be to discuss issues with Members of Congress  
6   and other Federal officials (that is, the annual mission is issue-driven) and that  
7   elections, campaigns and contributions are not discussed during the annual mission.  
8   Moreover, funds are solicited from participants specifically for the purpose of  
9   defraying these particular expenses. Further, while annual mission participants may  
10   use information gained during the mission in making future contribution decisions,  
11   this information is only one factor driving such contribution decisions. Thus, given  
12   these facts, and because the expenses about which you inquire are exclusively  
13   lobbying expenses, and are not made in connection with a Federal or a non-Federal  
14   election, these expenses are not subject to allocation under 11 CFR 106.6. If  
15   elections, campaigns and contributions were discussed during the annual mission or  
16   otherwise were a part of the annual mission, then allocation would be required for the  
17   expenses of the annual mission.

18           Under the facts presented NORPAC may deposit attendance fees related to  
19   the annual mission in NORPAC's non-Federal account, and NORPAC may make  
20   disbursements for the annual mission solely from its non-Federal account, without  
21   allocation between NORPAC's Federal and non-Federal accounts.

**This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. See 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this opinion, then the requestor may not rely on that conclusion as support for its proposed activity.**

**Ellen L. Weintraub  
Chair**